



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 06-067

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

General Comment

This report describes a number of drafting errors that occur throughout the rule. While the report presents examples of the errors, with guidance on how to correct them, the entire rule should be reviewed to find and correct other occurrences of these errors.

2. Form, Style and Placement in Administrative Code

a. The contents of the rule preface should be compared with the requirements contained in s. 1.02 (2) (a), Manual.

b. In SECTION 4 of the rule, the text of the newly created note should not be underscored.

c. This rule makes extensive use of renumbering to maintain the numerical sequence of numbered sections and subunits of sections. All of this renumbering is unnecessary, as new material can always be inserted between existing provisions. [See s. 1.03 (8), Manual.] In fact, some drafters discourage renumbering, for at least two reasons. First, extensive renumbering can make a simple draft difficult to read. The treatment of ss. PSC 160.071 and 160.073 by this rule, for example, is far more difficult to read than it should be, due entirely to extensive renumbering. Second, the use of letters for insertions and gaps in numbering that result from repeals leave footprints of a rule’s evolution over time, which are useful when researching a rule’s history.

d. If the commission chooses to use renumbering, note that standard drafting format allows a rule to renumber a series of provisions and to amend only some of those provisions, all

in one section. For example, SECTIONS 13 to 15 should be combined in a single section with the following treatment clause: “PSC 160.03 (2) (a) 8. to 15. are renumbered PSC 160.03 (2) (a) 7. to 14. and PSC 160.03 (2) (a) 12., as renumbered, is amended to read:” Similarly, SECTIONS 29 and 30 should be combined, with the following treatment clause: “PSC 160.06 (1) is renumbered PSC 160.06 (1) (a) and PSC 160.06 (1) (a) (intro.), as renumbered, is amended to read:” SECTIONS 54 to 56 should be combined in one section, except that the note following s. PSC 160.071 (1) (k) 1. should be created in a separate section (without underscoring).

e. Existing ch. PSC 160 and these revisions are written largely in the passive voice: they state that certain things shall happen or be done without saying who is responsible for making them happen or doing them. Use of the active voice (e.g., “the commission shall ...”) not only clearly identifies roles and responsibilities but also helps to produce rules that are clear and concise. The commission should draft primarily in the active voice and take every opportunity, including this rule, to change existing passive drafting to active voice. [See s. 1.01 (1), Manual.] Examples:

- In s. PSC 160.04 (2), “Blocking shall be without monthly or nonrecurring charge ...” should be replaced with “A local exchange service provider may not impose a monthly or nonrecurring charge for blocking”
- In s. PSC 160.061 (6), “A customer ... may not be charged ...” should be replaced with “A local exchange service provider may not charge a customer”
- The treatment of s. PSC 160.061 (4) (a) should read: “A customer whose If a customer’s claim of eligibility for link-up benefits cannot be verified at the time the service order is issued, the local exchange service provider may be billed bill the customer for installation charges. These customers shall receive The local exchange service provider shall allow the customer a grace period”

Sections PSC 160.061 (4) (b) and 160.09 (2) are good examples of correct drafting in the active voice.

f. In s. PSC 160.04 (4), the stricken-through material should precede the underscored material “and specified in this section.” [See, also, s. PSC 160.061 (5) (intro.).]

g. In the treatment of s. PSC 160.05 (1) (p), “PSC 160.071 (~~67~~) (b)” should be replaced with “PSC 160.071 (~~6~~) (7) (b).” Similarly, in the treatment of s. PSC 160.125 (2) (e), “par. (c) ~~56~~.a. to d.” should be replaced with “par. (c) ~~5~~. 6. a. to d.” [See s. 1.06 (2), Manual.]

h. The notation “(a)” should be omitted from the first line of SECTION 43 of the rule.

i. Section PSC 160.063 (4) has two pars. (b); the numbering needs revision.

j. Section PSC 160.071 (1) (c) essentially defines an acronym by placing it in parentheses following the term it represents – “telecommunications assistance program (TAP).” Rather, the rule should select one term, either the words or the acronym, to use and define it at the beginning of the chapter or section in which it is used. However, since “telecommunications

assistance program” is used only twice, the rule should simply spell out the words in those two places.

k. In s. PSC 160.071 (1) (m), “~~Such~~” should be inserted before “Commission staff.”

l. The treatment clause of SECTION 111 of the rule should read as follows: “PSC 160.13 (1) (intro.), (a), (b) (intro.), 1. and 2., (c) and (d) are amended to read:”

m. The stricken language in s. PSC 160.19 (1) is shown in the wrong place in the sentence. The stricken language, as shown, should be deleted and the underscored language should be replaced with “adopted pursuant to under.”

n. Section PSC 165.043 (4) (intro.) should be amended as follows (to use active voice): “~~All applicants, upon applying~~ When a person applies for new telecommunications service, the utility shall as a minimum, be informed by the utility as herein described inform the applicant of all of the following.”. In pars. (a) to (e), the phrases equivalent to the phrase in par. (b) “Applicants shall be informed of” should be stricken or omitted, to create grammatical consistency between the introduction and the following paragraphs. Paragraphs (f) and (g), as renumbered, should be placed in a new, separate sub. (4m).

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the description of s. PSC 160.03 in the rule preface, the notation “par.” should be replaced by the notation “sub.”

b. Section PSC 160.063 (2) should identify what projects are referred to, i.e., projects under sub. (1). Similarly, s. PSC 160.063 (4) (intro.) should refer to “An application *for funding under sub. (1)*.”

c. In s. PSC 160.071 (1) (c), the telecommunications assistance program should be more precisely identified by a cross reference to the statute or rule under which the Department of Health and Family Services administers it.

d. Section PSC 160.071 (3) (b) (intro.) should refer to “a discount given under par. (a).”

e. If the commission intends to apply s. PSC 160.10 (5) to reimbursement only for rate shock mitigation costs, it should refer to “reimbursement from the universal service fund under this section.” If, on the other hand, it intends to apply it to all reimbursements from the universal service fund, the provisions should be placed in a section addressing all reimbursements.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the description of s. PSC 160.09 in the rule preface, it appears that the word “Development” should be inserted after the word “Workforce.”

b. The last paragraph of the comparison with existing or proposed federal regulations in the rule preface refers to a “currently suspended” state USF assessment. If this is a reference to

the administrative rule suspension reflected in 2001 Assembly Bills 32 and 33 and 2001 Senate Bills 20 and 21, the suspension has been lifted because the bills failed to pass.

c. The second sentence of s. PSC 160.01 (5) does not make sense as written. Also, the phrase “which require the opportunity for a hearing” is merely descriptive, and should be deleted or moved to a note.

d. In s. PSC 160.04 (1) (intro.), the first occurrence of “the” should be replaced with “~~the~~ this.”

e. In s. PSC 160.06 (1) (a) (intro.), the term “state agency,” a term that does not need definition, is replaced with “government agency,” a more ambiguous term. Does the commission mean to include federal and local agencies, along with state agencies? What about tribal agencies? This should be more explicit.

f. Section PSC 160.06 (1) (b) should specify what an applicant is eligible for, i.e., “verified as eligible for low-income assistance”

g. Section PSC 160.61 (8) uses the phrase “would have been assessed.” This should be compared with the phrasing used in ss. PSC 160.062 (11) and 160.071 (7) (b). It appears that the phrasing should be made consistent and that the phrase “was charged” is most appropriate.

h. Section PSC 160.062 (4) is a confusing. The commission may want to consider the following revisions: (1) omit s. PSC 160.062 (4) (intro.); (2) insert “Except as provided in par. (c)” at the beginning of each paragraph; (3) insert “, one of the following applies” before the colon in s. PSC 160.062 (4) (a) (intro.); (4) substitute “the lifeline base rate includes” for “then” in s. PSC 160.062 (4) (a) 1. to 3. and (b).

i. The rule refers to many types of service providers and is generally clear in its use of this terminology. However, s. PSC 160.062 (5) (b) (note) and (6) (b) (note) refer to “utility” and ss. PSC 160.062 (9) and 160.08 and Figure 160.09 (4) (a) 5. (as renumbered) refer simply to “provider.” In these instances, what types of service providers are intended? This should be clarified.

j. In s. PSC 160.063 (3), “applications” should be inserted after “review.”

k. The rule amends s. PSC 160.071 (1) (j) to say that the commission staff, rather than the commission, may impose certain limits. If the limits imposed by the staff are consistent and apply uniformly, they are rules under s. 227.01 (13), Stats., and the commission should amend this rule to include them.

l. The second sentence of s. PSC 160.071 (3) (b) (intro.) and the three following subdivisions are sufficiently different in substance from the first sentence that it would be better to make that material par. (b) and to make the first sentence par. (c). The same comment applies to s. PSC 160.071 (4) (b).

m. Section PSC 160.073 (8) (c) and (d) 1. and 2. should be written as full sentences. See current s. PSC 160.073 (7) (a) to (c).

n. The definition of “median household income” in s. PSC 160.09 (5) (g) should be moved to the beginning of either s. PSC 160.09 or PSC 160.09 (5).

o. A cleaner and clearer way to amend s. PSC 160.115 (1) (a) would be as follows: “Initial application” means ~~an~~ the first application for universal service fund support under this section that is ~~the first such application filed by the~~ an applicant ~~during files in~~ a state fiscal year.

p. The word “following” appears twice in s. PSC 160.125 (2) (c) 6. (intro.), as amended. It appears that the first occurrence of the word “following” should be stricken.

q. Section PSC 160.13 (1) confuses requirements and actions. The last phrase of sub. (1) (intro.) should be amended as follows: “... if it ~~meets~~ does all of the following ~~requirements~~.”. Paragraph (b) should be amended as follows:

(b) (intro.) Advertises its services in the area on a regular basis, ~~with such~~ which advertisements meet all of the following requirements:

1. ~~Disseminated~~ The advertisements are disseminated in ... ÷.
2. ~~Describing~~ The advertisements describe the service offered; ~~and~~.
3. ~~Describing~~ The advertisements describe